

HOUSE BILL 1151

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CF SB 595

By: **Delegate Feldman**

Introduced and read first time: February 14, 2011

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Corporations – Limited Liability Companies – Election to Be a Benefit**
3 **Corporation**

4 FOR the purpose of authorizing a Maryland limited liability company to elect to be a
5 benefit corporation; specifying the process by which a limited liability company
6 may elect to be a benefit corporation; specifying the process by which a limited
7 liability company may terminate its status as a benefit corporation; requiring a
8 clear reference to the fact that a limited liability company is a benefit
9 corporation to appear prominently at the head of certain articles of organization
10 of the limited liability company; requiring the limited liability company to have
11 a certain purpose; authorizing the limited liability company to have a certain
12 purpose; requiring a member of the limited liability company to consider the
13 effects of certain actions or decisions not to act on certain persons and interests;
14 requiring the limited liability company to deliver a certain annual benefit report
15 to each member of the limited liability company within a certain time period
16 and to post the report on a certain portion of its Web site under certain
17 circumstances; prohibiting a provision of the articles of organization or
18 operating agreement of the limited liability company from being inconsistent
19 with certain provisions of law; altering a certain definition; making certain
20 conforming changes; and generally relating to limited liability companies and
21 benefit corporations.

22 BY repealing and reenacting, with amendments,
23 Article – Corporations and Associations
24 Section 5–6C–01, 5–6C–02, and 5–6C–04 through 5–6C–08
25 Annotated Code of Maryland
26 (2007 Replacement Volume and 2010 Supplement)

27 BY repealing and reenacting, with amendments,
28 Article – Corporations and Associations
29 Section 5–6C–03

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2007 Replacement Volume and 2010 Supplement)
3 (As enacted by Chapters 97 and 98 of the Acts of the General Assembly of 2010)

4 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
5 MARYLAND, That the Laws of Maryland read as follows:

6 **Article – Corporations and Associations**

7 5–6C–01.

8 (a) In this subtitle the following words have the meanings indicated.

9 (b) “Benefit corporation” means a Maryland corporation **OR MARYLAND**
10 **LIMITED LIABILITY COMPANY** that elects to be a benefit corporation in accordance
11 with § 5–6C–03 of this subtitle and has not ceased to be a benefit corporation through
12 the operation of § 5–6C–04 of this subtitle.

13 (c) “General public benefit” means a material, positive impact on society and
14 the environment, as measured by a third–party standard, through activities that
15 promote a combination of specific public benefits.

16 (d) “Specific public benefit” includes:

17 (1) Providing individuals or communities with beneficial products or
18 services;

19 (2) Promoting economic opportunity for individuals or communities
20 beyond the creation of jobs in the normal course of business;

21 (3) Preserving the environment;

22 (4) Improving human health;

23 (5) Promoting the arts, sciences, or advancement of knowledge;

24 (6) Increasing the flow of capital to entities with a public benefit
25 purpose; or

26 (7) The accomplishment of any other particular benefit for society or
27 the environment.

28 (e) “Third–party standard” means a standard for defining, reporting, and
29 assessing best practices in corporate social and environmental performance that:

30 (1) Is developed by a person or entity that is independent of the
31 benefit corporation; and

1 (2) Is transparent because the following information about the
2 standard is publicly available or accessible:

3 (i) The factors considered when measuring the performance of a
4 business;

5 (ii) The relative weightings of those factors; and

6 (iii) The identity of the persons who developed and control
7 changes to the standard and the process by which those changes were made.

8 5-6C-02.

9 (a) The provisions of the Maryland General Corporation Law apply to benefit
10 corporations except to the extent that:

11 (1) The context of a provision clearly requires otherwise; or

12 (2) A specific provision of this subtitle or another provision of law
13 governing specific classes of corporations **OR LIMITED LIABILITY COMPANIES**
14 provides otherwise.

15 (b) This subtitle applies only to benefit corporations.

16 (c) (1) The existence of a provision of this subtitle does not of itself create
17 any implication that a contrary or different rule of law is or would be applicable to a
18 corporation **OR LIMITED LIABILITY COMPANY** that is not a benefit corporation.

19 (2) This subtitle does not affect any statute or rule of law as it applies
20 to a corporation **OR LIMITED LIABILITY COMPANY** that is not a benefit corporation.

21 (d) A provision of the charter [or], bylaws, **ARTICLES OF ORGANIZATION,**
22 **OR OPERATING AGREEMENT** of a benefit corporation may not be inconsistent with
23 any provision of this subtitle.

24 5-6C-03.

25 (a) **(1)** A corporation may elect to be a benefit corporation under this
26 subtitle by amending or including in the charter of the corporation a statement that
27 the corporation is a benefit corporation.

28 **(2) A LIMITED LIABILITY COMPANY MAY ELECT TO BE A BENEFIT**
29 **CORPORATION UNDER THIS SUBTITLE BY AMENDING OR INCLUDING IN THE**
30 **ARTICLES OF ORGANIZATION OF THE LIMITED LIABILITY COMPANY A**
31 **STATEMENT THAT THE LIMITED LIABILITY COMPANY IS A BENEFIT**
32 **CORPORATION.**

1 (b) **(1)** An amendment described in subsection [(a)] **(A)(1)** of this section
2 shall be approved in accordance with Title 2, Subtitle 6 of this article.

3 **(2)** **AN AMENDMENT DESCRIBED IN SUBSECTION (A)(2) OF THIS**
4 **SECTION SHALL BE APPROVED IN ACCORDANCE WITH § 4A-204(C)(2) OF THIS**
5 **ARTICLE.**

6 5-6C-04.

7 (a) A corporation **OR LIMITED LIABILITY COMPANY** may terminate **ITS**
8 status as a benefit corporation and cease to be subject to this subtitle by amending the
9 charter of the corporation **OR THE ARTICLES OF ORGANIZATION OF THE LIMITED**
10 **LIABILITY COMPANY** to delete the statement that the corporation **OR LIMITED**
11 **LIABILITY COMPANY** is a benefit corporation.

12 (b) An amendment terminating [a corporation's] **THE** status **OF A**
13 **CORPORATION OR LIMITED LIABILITY COMPANY** as a benefit corporation shall be
14 approved by the stockholders of the corporation in accordance with Title 2, Subtitle 6
15 of this article **OR THE MEMBERS OF THE LIMITED LIABILITY COMPANY IN**
16 **ACCORDANCE WITH § 4A-204(C)(2) OF THIS ARTICLE.**

17 5-6C-05.

18 Clear reference to the fact that a corporation **OR LIMITED LIABILITY**
19 **COMPANY** is a benefit corporation shall appear prominently:

20 (1) At the head of the charter document **OR ARTICLES OF**
21 **ORGANIZATION** in which the election to be a benefit corporation is made;

22 (2) At the head of each subsequent charter document **OR ARTICLES**
23 **OF ORGANIZATION** of the benefit corporation; and

24 (3) On each certificate representing outstanding stock of the benefit
25 corporation.

26 5-6C-06.

27 (a) (1) Each benefit corporation shall have the purpose of creating a
28 general public benefit.

29 (2) The purpose described in paragraph (1) of this subsection is in
30 addition to, and may be a limitation on, the purposes of the corporation under § 2-101
31 of this article **OR OF THE LIMITED LIABILITY COMPANY UNDER § 4A-201 OF THIS**
32 **ARTICLE.**

1 (b) (1) In addition to its purposes under § 2-101 **OR § 4A-201** of this
2 article and subsection (a) of this section, the charter **OR ARTICLES OF**
3 **ORGANIZATION** of a benefit corporation may identify as one of the purposes of the
4 benefit corporation the creation of one or more specific public benefits.

5 (2) The identification in its charter **OR ARTICLES OF ORGANIZATION**
6 of a specific public benefit purpose under paragraph (1) of this subsection does not
7 limit the obligation of a benefit corporation to create a general public benefit.

8 (c) The creation of a general public benefit or specific public benefit as
9 provided in subsections (a) and (b) of this section is in the best interests of the benefit
10 corporation.

11 5-6C-07.

12 (a) A director **OR MEMBER** of a benefit corporation, in performing the duties
13 of a director **OR MEMBER**, including the director's duties as a member of a committee
14 and in addition to the duties described in § 2-405.1 of this article:

15 (1) In determining what the director **OR MEMBER** reasonably believes
16 to be in the best interests of the benefit corporation, shall consider the effects of any
17 action or decision not to act on:

18 (i) The stockholders **OR MEMBERS** of the benefit corporation;

19 (ii) The employees and workforce of the benefit corporation and
20 the subsidiaries and suppliers of the benefit corporation;

21 (iii) The interests of customers as beneficiaries of the general or
22 specific public benefit purposes of the benefit corporation;

23 (iv) Community and societal considerations, including those of
24 any community in which offices or facilities of the benefit corporation or the
25 subsidiaries or suppliers of the benefit corporation are located; and

26 (v) The local and global environment; and

27 (2) May consider any other pertinent factors or the interests of any
28 other group that the director **OR MEMBER** determines are appropriate to consider.

29 (b) A director **OR MEMBER** of a benefit corporation, in the performance of
30 duties in that capacity, does not have any duty to a person that is a beneficiary of the
31 public benefit purposes of the benefit corporation.

32 (c) A director of a benefit corporation, in the reasonable performance of
33 duties in accordance with the standard provided in this subtitle, shall have the
34 immunity from liability described in § 5-417 of the Courts Article.

1 5-6C-08.

2 (a) A benefit corporation shall deliver to each stockholder **OR MEMBER** an
3 annual benefit report including:

4 (1) A description of:

5 (i) The ways in which the benefit corporation pursued a general
6 public benefit during the year and the extent to which the general public benefit was
7 created;

8 (ii) The ways in which the benefit corporation pursued any
9 specific public benefit that its charter **OR ARTICLES OF ORGANIZATION** states is the
10 purpose of the benefit corporation to create and the extent to which that specific public
11 benefit was created; and

12 (iii) Any circumstances that have hindered the creation by the
13 benefit corporation of the public benefit; and

14 (2) An assessment of the societal and environmental performance of
15 the benefit corporation prepared in accordance with a third-party standard applied
16 consistently with the prior year's benefit report or accompanied by an explanation of
17 the reasons for any inconsistent application.

18 (b) The benefit report shall be delivered to each stockholder **OR MEMBER**
19 within 120 days following the end of each fiscal year of the benefit corporation.

20 (c) (1) A benefit corporation shall post its most recent benefit report on
21 the public portion of its website, if any.

22 (2) If a benefit corporation does not have a public website, the benefit
23 corporation shall provide a copy of its most recent benefit report on demand and
24 without charge to any person who requests a copy.

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
26 October 1, 2011.